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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,646	06/27/2003	Guyton P. Swindell	A8973	2684
23373	7590	12/11/2006	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			PHAN, THIEM D	
			ART UNIT	PAPER NUMBER
			3729	

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NT

<b>Office Action Summary</b>	Application No. 10/607,646	Applicant(s) SWINDELL ET AL.	
	Examiner Tim Phan	Art Unit 3729	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission filed on 11/17/06 has been entered.

### ***Abstract***

2. The abstract of the disclosure is objected to because the elected and claimed invention is about the Method Claims. Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 6, 7, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al (US 5,696,864).

**With regard to claim 6**, Smith et al teach a method for use in tapping into an above ground communications transmission cable having multiple fiber optic strands comprising:

- applying a clamp (Fig. 1, 21 & 22) to a first portion of a first fiber optic cable (Fig. 1, 18);
- using a bail (Fig. 1, 12) to connect the clamp to a support structure (Fig. 1, 14);
- connecting a splice closure (Fig. 1, 10) to the bail;
- connecting an aerial splicing platform (Fig. 7, 66) to the bail (Fig. 7, 12)
- splicing (Fig. 7, 122 & C; col. 5, lines 42-49; col. 6, lines 1-13) a second portion of the first fiber optic cable to a second fiber optic cable (Fig. 1, 112) in the splice closure;
- wherein said fiber optic cable do not pass through said bail.

**With regard to claim 7,** Smith et al teach that the splice closure (Fig. 1, 10) is positioned away from the clamp (Fig. 1, 21 & 22) to maintain a minimum bend radius in the first fiber optic cable (Fig. 1, 110).

**With regard to claim 10,** Smith et al teach that the splice points (Fig. 7, 122 & C; col. 5, lines 42-49; col. 6, lines 1-13) or slack coils are not predetermined prior to applying the clamp (Fig. 1, 21 & 22) to a first portion of a first fiber optic cable and using a bail (Fig. 1, 12) to connect the clamp to a support structure (Fig. 1, 14) as it further requires a splice/table stray (Fig. 6, 66; col. 4, lines 21-27) hanging on the bail to work on the optical cable.

**With regard to claim 12,** Smith et al teach a method for use in tapping into an above ground communications transmission cable having multiple fiber optic strands comprising:

- applying a clamp (Fig. 1, 21 & 22) to a first portion of a first fiber optic cable (Fig. 1, 18);
- using a bail (Fig. 1, 12) to connect the clamp to a support structure (Fig. 1, 14);
- connecting a splice closure (Fig. 1, 10) to the bail;
- connecting an aerial splicing platform (Fig. 7, 66) to the bail (Fig. 7, 12);
- splicing (Fig. 7, 122 & C; col. 5, lines 42-49; col. 6, lines 1-13) a second portion of the first fiber optic cable to a second fiber optic cable (Fig. 1, 112) in the splice closure;
- wherein said bail is not connected to said first fiber optic cable.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al in view of Forrester et al (US 5,867,624).

**With regard to claim 8**, Smith et al teach a method for use in tapping into an above ground communications transmission cable having multiple fiber optic strands, which reads on applicants' claimed invention.

Forrester et al teach a method of storing surplus fiber optic cable above ground by using an all-dielectric, self-supporting (ADSS) fiber optic cable (Col. 2, lines 36 & 37) in order to have the advantage of strength and application in close proximity to power line (Col. 1, lines 9-11).

It would be obvious to one of ordinary skill in the art at the time the invention was made to combine the two teachings by applying the ADSS optical cable, as taught by Forrester et al, to the method of tapping into an above ground communications transmission cable with multiple fiber optic strands as taught by Smith et al in order to have the advantage of strength and application in close proximity to power line.

**With regard to claim 9**, Smith et al teach a method for use in tapping into an above

ground communications transmission cable having multiple fiber optic strands including the in-line and butt splice (Fig. 7, C) of the optical cable strands (Fig. 7, 122) without severing the first fiber optic cable (Fig. 7, only 122 & C; col. 5, lines 42-49; col. 6, lines 1-13), which reads on applicants' claimed invention.

Forrester et al teach the process of working on aerial fiber optic cable, including the in-line and butt splice (Col. 7, lines 9-13) of the ADSS optical cable (Fig. 9, 10) in order to have the advantage of strength and application in close proximity to power line (Col. 1, lines 9-11).

It would be obvious to one of ordinary skill in the art at the time the invention was made to combine the two teachings by applying the working of ADSS optical cable, as taught by Forrester et al, to the method of tapping into an above ground communications transmission cable with multiple fiber optic strands as taught by Smith et al in order to have the advantage of strength and application in close proximity to power line.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al in view of Applicants' Admitted Prior Art, hereinafter AAPA.

**With regard to claim 11**, Smith et al teach a method for use in tapping into an above ground communications transmission cable having multiple fiber optic strands, which reads on applicants' claimed invention.

The AAPA teaches the technique of "taut sheath splicing" on steel cable supporting fiber optic cables extruded together into a 'figure 8' form in order to enable an user to splice in the drop cable without predetermining splice points or slack coils (AAPA, page 1, paragraph 0003)

and to drop service to specific customers.

It would be obvious to one of ordinary skill in the art at the time the invention was made to combine the two teachings by applying the “taut sheath splicing”, as taught by AAPA, to the method of working on fiber optic cable, as taught by Smith et al, in order to facilitate the fiber optic cable’s drop service to specific customers.

### ***Response to Arguments***

8. Applicants' arguments, filed on 11/17/06, with respect to the above claims have been considered but are moot in view of the new ground of rejection.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicants' disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tim Phan whose telephone number is 571-272-4568. The examiner can normally be reached on M & Tu, 6AM - 2PM, and W & Th, 9AM – 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s



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supervisor, Peter Vo can be reached on 571-272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script, appearing to read "Tim Phan".

Tim Phan  
Examiner  
Art Unit 3729

tp  
December 8, 2006